



Commonwealth of Massachusetts State Ethics Commission

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SUFFOLK, ss.

**COMMISSION ADJUDICATORY
DOCKET NO. 590**

**IN THE MATTER
OF
JOHN P. SULLIVAN**

DISPOSITION AGREEMENT

This Disposition Agreement ("Agreement") is entered into between the State Ethics Commission ("Commission") and John P. Sullivan ("Sullivan") pursuant to Section 5 of the Commission's Enforcement Procedures. This Agreement constitutes a consented to final order enforceable in the Superior Court, pursuant to G.L. c. 268B, §4(j).

On February 10, 1998, the Commission initiated, pursuant to G.L. c. 268B, §4(a), a preliminary inquiry into possible violations of the conflict of interest law, G.L. c. 268A, by Sullivan. The Commission has concluded its inquiry and, on September 23, 1998, found reasonable cause to believe that Sullivan violated G.L. c. 268A.

The Commission and Sullivan now agree to the following findings of fact and conclusions of law:

1. Sullivan is the Department of Mental Health ("DMH") Southeastern ("SE") Area director. As such, Sullivan is a state employee as that term is defined in G.L. c. 268A, §1.
2. As the DMH SE Area director, Sullivan is the manager responsible for all DMH personnel and facilities in that region.
3. Sylvia Killion ("Killion") was, during the time here relevant, the DMH SE Area Management Information Systems ("MIS") director.
4. As the DMH SE MIS director, Killion was responsible for all the computer hardware and software issues in the region. In particular, Killion supervised a wide area network ("WAN") covering the entire region. Her office was in the Brockton Multi-Service Center, however, she also visited the various outlying facilities to deal with MIS issues.
5. Sullivan and Killion did not know one another when she transferred to DMH from the Executive Office of Administration & Finance, but their close working relationship at DMH developed into a close personal friendship extending outside the office. It extended as well to their respective families. The friendship of the families was known to others within the DMH SE Area office. Sullivan did not disclose this friendship in writing to his own appointing authority prior to his acting on personnel matters affecting Killion.
6. Killion was employed in a position covered by the Unit Six collective bargaining agreement between the Commonwealth of Massachusetts and the National Association of Government Employees. She was paid on an hourly basis. Sullivan was her supervisor at all times relevant to this matter.

7. Overtime was covered by Section 7.2 of the Collective Bargaining Agreement for Unit 6. It provides:

H. Overtime shall be distributed as equitably and impartially as practicable among persons in each work location who ordinarily perform such related work in the normal course of their workweek. Department heads and union representatives at each location shall work out procedures for implementing this policy of distributing overtime work.

8. DMH's policy for the SE Area required full justification for overtime requests and set specific criteria that had to be met for each period of overtime requested.

9. Between February 11, 1996, and June 7, 1997, DMH's available records show Sullivan authorized Killion to work 528 hours of overtime, mostly in 10 hour per week increments. Much of this overtime work was authorized to be done on weekends at home. Sullivan signed and authorized all 53 of Killion's overtime slips as the program manager.^{1/}

10. On at least 24 occasions, Killion's overtime slips lack an articulation of reasons for the overtime, contrary to DMH policy.^{2/}

11. During this same period of time when DMH payroll records indicate that Killion individually received 678 hours of overtime pay, all other SE Area MIS staff employees combined received a total of 60.5 hours, according to DMH payroll records.

12. There is no evidence before the Commission that Sullivan, who was the department head at the Brockton location, attempted to work out a procedure for more equitably distributing overtime work among SE Area MIS Staff, as required by Section 7.2H of the Collective Bargaining Agreement.

13. In FY 96 Killion's overtime pay rate was \$33.53/hour. In FY 97 her overtime pay rate was \$38.94/hour. Ten hours of overtime each week meant an extra \$389.40 each week in her check or an extra \$20,284.00 per year.

14. Killion has acknowledged in a disposition agreement with the Commission, *In re Killion*, 1999 SEC 936 that she failed to work a significant number of the overtime hours for which she received compensation.^{3/}

15. Killion was authorized to work the following flextime schedule: Monday through Wednesday 8:00 a.m. to 5:00 p.m., Thursday 2:00 p.m. to 11:00 p.m. and six hours Friday at home. In her disposition agreement Killion also acknowledges (a) that she usually arrived at work between 9:00 and 9:30 a.m. on Monday through Wednesday, and between 3:30 and 4:00 p.m. on Thursday, and (b) Killion left work almost every Thursday night between 9:30 and 10:00 p.m.

16. Killion was not required to document any work she did at home.

17. Killion has acknowledged in a disposition agreement with the Commission, *In re Killion*, 1999 SEC 936 that she did not work a significant number of the flextime hours for which she received compensation.

18. As Killion's supervisor, Sullivan had reason to know that Killion was not performing all the overtime and/or flextime hours for which she received compensation. This conclusion is based on the following: (1) Sullivan provided Killion with virtually all of the DMH SE area overtime, yet there was no particular increase in her duties to justify that extent of overtime; (2) in violation of Sullivan's own policy, Sullivan authorized Killion to perform significant amounts of overtime without any pre-authorization justification; (3) Sullivan did not require nor did Killion offer later justification for her overtime hours; and (4) Killion's family commitments, of which Sullivan was aware, would make it difficult for her to work any significant overtime and especially not 678 hours during the time described above.

19. In April 1998, Killion resigned from her position.

20. Section 23(b)(2) G.L. c. 268A prohibits a public employee from knowingly or with reason to know using or attempting to use his position to obtain for himself or others an unwarranted privilege of substantial value which is not properly available to similarly situated individuals.

21. Sullivan used his position as DMH SE Area director to authorize Killion to receive compensation for overtime and flextime hours, even though, as set forth above, Sullivan had reason to know Killion did not work all the hours for which she received compensation.

22. This use of position resulted in Killion obtaining the unwarranted privilege of receiving compensation for hours she now acknowledges she did not work.

23. The compensation she received for the hours she now acknowledges she did not work exceeded \$50. Therefore, the privilege was of substantial value.^{4/}

24. The privilege which Killion received was not available to similarly situated individuals.

25. Thus, by authorizing Killion to receive \$50 or more in compensation for overtime and flextime hours that Sullivan had reason to know that she did not work, Sullivan used his DMH SE Area director position to obtain an unwarranted privilege of substantial value for Killion not properly available to other similarly situated individuals, thereby violating §23(b)(2).

26. General laws chapter 268A, §23(b)(3) prohibits a public employee from knowingly or with reason to know acting in a manner which would cause a reasonable person, having knowledge of the relevant circumstances, to conclude that any person can improperly influence him or unduly enjoy his favor in the performance of his official duties, or that he is likely to act or fail to act as a result of kinship, rank, position or undue influence of any party or person.

27. By authorizing Killion to receive compensation for overtime and flextime hours in disproportion to other MIS staff and by not requiring documentation of such work, Sullivan with reason to know acted in a manner which would cause a reasonable person with knowledge of all the relevant circumstances to conclude that his private relationship with Killion improperly influenced him in the performance of his official duties, thereby violating G.L. c. 268A, §23(b)(3).

In view of the foregoing violations of G.L. c. 268A by Sullivan, the Commission has determined that the public interest would be served by the disposition of this matter without

further enforcement proceedings, on the basis of the following terms and conditions agreed to by Sullivan:

(1) that Sullivan pay to the Commission the sum of five hundred dollars (\$500) as a civil penalty for violating G.L. c. 268A, §§23(b)(2) and 23(b)(3); and

(2) that Sullivan waive all rights to contest the findings of fact, conclusions of law and terms and conditions contained in this Agreement in this or any other related administrative or judicial proceedings to which the Commission is or may be a party.

DATE: August 16, 1999

^{1/}DMH was only able to locate 53 overtime slips for Killion for the period February 11, 1996 to June 7, 1997. These 53 slips totaled 528 hours of overtime. The payroll records for this 69 week period, however, indicate that Killion was paid for 678 hours of overtime.

^{2/}All but one of Killion's slips authorize 10 hours overtime per week.

^{3/}Given the absence of accurate records, it is now impossible to approximate how many of these hours were not worked.

^{4/}The Commission defines "substantial value" as anything with a value of \$50. See *Commonwealth v. Famigletti*, 4 Mass. App. 584 (1976); *EC-COI-93-14*.